

**REMARKS**

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks.

**Status of Claims**

Claims 1-15 are currently pending, of which claims 1, 12 and 14 are independent.

In the Final Office Action dated July 2, 2009, claims 1-10 and 12-15 were rejected and claim 11 was objected to.

By virtue of the amendments above, claims 1, 3, 11, 12, and 14 have been amended. Support for the amendments in independent claims 1, 12 and 14 may be found in the equation described in the specification, page 15, lines 15-26 or claim 11. Claims 3 and 11 were amended to provide proper antecedent basis for elements recited in the claim.

In addition, the specification was amended to provide proper antecedent basis for the “computer data readable medium” recited in the original claims 14 and 15.

It is submitted that no new matter has been introduced by the above amendments. Entry thereof is therefore respectfully requested.

**Summary of the Office Action**

The specification was objected to under 37 CFR 1.75(d)(1) and MPEP 608.01(o) as allegedly failing to provide antecedent basis for the claimed subject matter.

Claims 3 and 11 were objected to because of minor informalities.

Claim 11 was indicated that it would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-8 and 12-15 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,792,323 to Krzyzanowski et al. (hereinafter “Krzyzanowski”) in view of U.S. Patent No. 6,982,962 to Lunsford et al. (hereinafter “Lunsford”).

Claims 9-10 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Krzyzanowski in view of Lunsford and further in view of U.S. Patent Application Publication No. 2002/0089687 to Ferlitsch et al. (hereinafter “Ferlitsch”).

The rejections above are respectfully traversed for at least the following reasons.

**Allowable Subject Matter**

The indication that claim 11 is objected to as being dependent upon a rejected base claim, but that claim 11 would otherwise be allowable is acknowledged with appreciation. At this time, claim 11 has not been rewritten in independent form. Instead of incorporating the entire equation of claim 11 into independent claims 1, 12, and 14, independent claims 1, 12, and 14 have been amended to recite features derived from the equation recited in claim 11. It is believed that the features derived from the equation recited in claim 11 and added to independent claims 1, 12, and 14 are not taught or suggested by the cited documents of record, for reasons set forth below. Accordingly, it is respectfully submitted that claims 1-15 are allowable over the cited documents of record. An early indication of allowability is thus earnestly solicited.

**Objection to the Specification**

The specification was objected to under 37 CFR 1.75(d)(1) and MPEP 608.01(o) because the specification allegedly failed to provide proper antecedent basis for the term “computer data readable medium” in claims 14-15. In response, the specification has been amended above to include the “computer data readable medium.” Because the term “computer data readable medium” was recited in the original claims 14 and 15, it is not new matter. With the aforementioned amendment to the specification, it is respectfully submitted that the objection to the specification has been overcome.

**Claim Objection**

Claims 3 and 11 were objected to because of the informalities. Specifically, claim 3 was objected to because of the phrase “with other devices, each other device” (See *Final Office Action*, page 4). In response, claim 3 has been amended to recite “with other devices, each of the other devices.” Thus, claim 3 is now clear.

In the objection to claim 11, the Final Office Action notes that the “DSi” in claim 11 is interpreted to be the same as the device score calculated in claim 7. Applicants respectfully agree with that interpretation.

Accordingly, the objection to claims 3 and 11 is respectfully requested to be withdrawn.

**Claim Rejections Under 35 U.S.C. §103(a)**

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007):

“Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

As set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, “[a]ll claim limitations must be considered” because “all words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385. According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

(A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary

skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006), “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness.”

Therefore, if the above-identified criteria and rationales are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

- **Claims 1-8 and 12-15:**

Claims 1-8 and 12-15 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Krzyzanowski in view of Lunsford. The rejection is respectfully traversed for at least the following reasons.

- **Independent Claims 1, 12, and 14:**

Independent claims 1, 12, and 14 recite, *inter alia*, “wherein calculating the score for each functionally responsive combination is based on a weight assigned to each of the devices in the functionally responsive combination according to a combination-level policy, an unweighted device score for each of the devices, and a percentage indicating availability of each of the devices” (emphasis added). Krzyzanowski in view of Lunsford, taken individually or in

combination, fails to teach or suggest the claimed features recited above for at least the following reasons.

As discussed above, the Final Office Action indicates that claim 11 contains allowable subject matter. In other words, the equation recited in claim 11 is allowable over Krzyzanowski in view of Lunsford. As a result, independent claims 1, 12, and 14 have been amended to recite features derived from the allowable equation recited in claim 11. More specifically, the “weight assigned to each of the devices in the functionally responsive combination according to a combination-level policy” recited in independent claims 1, 12, and 14 is the *swi* in claim 11, the “unweighted device score for each of the devices” the *DS<sub>i</sub>*, and the “percentage indicating availability of each of the devices” the *e(D<sub>i</sub>)*. Because Krzyzanowski in view of Lunsford fails to teach or suggest the allowable equation recited in claim 11, it is believed that Krzyzanowski in view of Lunsford also fails to teach or suggest the aforementioned features recited in independent claims 1, 12, and 14.

In addition, the Final Office Action correctly admits that Krzyzanowski fails to teach or suggest the calculating of the score for each combination, as recited in independent claims 1, 12, and 14. The Final Office Action uses Lunsford as the teaching for the claimed score calculation. However, Lunsford discloses calculating a score for each device or network access provider (See *Lunsford*, col. 6, lines 56-58). There are no combinations of devices and no calculation of the scores for each combination in Lunsford. Thus, Lunsford fails to teach or suggest “calculating a score for each such functionally responsive combination,” as recited in claims 1, 12, and 14.

Furthermore, in Lunsford, the calculation of the score for each device is based on the importance the user assigns to the device (step 430 in Fig. 6) and the heuristic routing which includes the cost from the device (step 440) (See *Lunsford*, col. 7, lines 12-49 and Fig. 6). Thus, the calculation of the score for each device in Lunsford is unrelated to the calculation of the score for each combination of devices, and unrelated to (1) the weight assigned to each device according to the combination-level policy, (2) an unweighted device score, and (3) a percentage of availability of the device, as recited in claims 1, 12, and 14.

For at least the foregoing reasons, the Office Action has failed to establish that independent claims 1, 12, and 14 are *prima facie* obvious in view of the combined disclosures contained in Krzyzanowski in view of Lunsford, as proposed in the Office Action. Therefore, reversal of the rejection of independent claims 1, 12, and 14 and allowance of these claims are respectfully requested.

o Dependent Claims 2-10, 13 and 15:

Claims 2-10, 13 and 15 are dependent from one of the independent claims 1, 12 and 14. Thus, they are also believed to be allowable over the cited documents of record for at least the same reasons as set forth to independent claims 1, 12, and 14 above. It is therefore respectfully requested that the rejection of claims 2-10, 13, and 15 be reversed, and these dependent claims be allowed.

- **Claims 9 and 10:**

Claims 9 and 10 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Krzyzanowski in view of Lunsford and further in view of Ferlitsch. The rejection is respectfully traversed for at least the following reasons.

Claims 9 and 10 depend from independent claim 1. As discussed above, the combination of Krzyzanowski and Lunsford fails to disclose all of the features of independent claim 1. In setting forth the rejection of claims 9 and 10, the Office Action has not and cannot reasonably assert that the disclosure contained in Ferlitsch makes up for any of the deficiencies discussed above with respect to the proposed combination. Accordingly, even assuming for the sake of argument that one of ordinary skill in the art were somehow motivated to modify the proposed combination of Krzyzanowski and Lunsford with the disclosure contained in Ferlitsch, the proposed modification would still fail to yield all of the features of independent claim 1 from which claims 9 and 10 depend.

For at least the foregoing reasons, the Office Action has failed to establish that claims 9 and 10 are *prima facie* obvious in view of the combined disclosures contained in Krzyzanowski, Lunsford and Ferlitsch, as proposed in the Office Action. The Examiner is therefore respectfully requested to withdraw the rejection of claims 9 and 10 and to allow these claims.



**PATENT**

Atty Docket No.: 200208333-1  
App. Ser. No.: 10/632,403

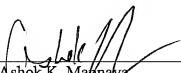
**Conclusion**

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited. Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to Deposit Account No. 08-2025.

Respectfully submitted,

Dated: October 2, 2009

By

  
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